

A. G. Contract No. KR02-1929TRN
ADOT ECS File: JPA 02-160
City of Phoenix File No. 104983
Project No.: AC-CM-PHX-0(032)A
TRACS No.: SS469 01C
Section: 43rd Avenue and Peoria Avenue
Grade Separation Structure

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

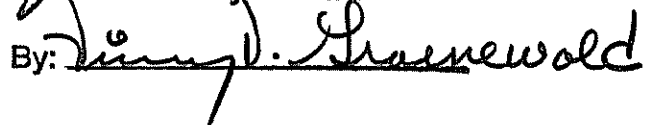
THIS AGREEMENT is entered into May 28th, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX acting by and through its CITY MANAGER (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Phoenix City Charter Chapter 11, Section 2(i) and Arizona Revised Statutes Sections 11-951 to 11-954 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. The City has submitted to the Federal Highway Administration (FHWA) for approval of advance construct federal funds from Federal Fiscal Year (FFY) 2007, an estimated total amount of \$560,000.00, for the construction of a grade separation structure at 43rd and Peoria Avenues, herein referred to as the "Project". Federal funds for Phase II of the Project, are programmed in the 2003-2007 of the Maricopa Association of Governments (MAG) Transportation Improvement Program (TIP)/State Transportation Improvement Program (STIP) as (PHX07 - 312), in an amount estimated at \$560,000.00 for reimbursement in FFY 2007, for conversion in 2003.
4. MAG has selected the Project within the boundary of the City and the City wishes to advance the Project's construction to meet FHWA requirements. The City takes full responsibility of all Project's costs until the time of federal fiscal year reimbursement. If federal funds are not available, the City is responsible for the total cost of the Project.

NO. 26018
Filed with the Secretary of State
Date Filed: 05/28/03


Secretary of State

By: 

5 The only interest of the State in this Project is in the acquisition of federal funds and facilitating reimbursement of said federal funds in FFY 2007 in accordance with 23 U S C. 115. Upon execution of this agreement the State will submit the project to the FHWA for authorization. It is understood and agreed to by the parties herein that authorization of this Project does not constitute a commitment, guarantee or obligation on the part of the State.

6 The work embraced by this agreement and the estimated Project costs are as follows: The Advance construction of Phase II of a grade separation structure at 43rd and Peoria Avenues

Estimated Construction Cost Phase I and Phase II	\$3,141,107.00
Estimated Fed-Aid Funds Phase II, Advanced @ 80% of \$700,000.00 (Reimbursement) - FY 2007)	\$ 560,000.00
Estimated City of Phoenix Funds Phase II @ 20% of \$700,000.00	\$ 140,000.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1 Upon execution of this agreement, the City agrees to set aside funds in an amount estimated at \$3,141,107.00 for the total cost of the work provided herein, including the amount of federal funds to be received in FFY 2002 and FFY 2007.

2 On or after October 1, 2006, the City will provide the State with documentation from MAG at the time of authorization/obligation, committing to the reimbursement of federal funds, in the estimated amount of \$560,000.00, shown in the 2003-2007 TIP, for Phase II of the Project.

3 If MAG should advance the FFY 2007 TIP federal funds to FFY 2003 and a formal approval through the Regional Council and an approved TIP/STIP amendment is provided, then the City will request MAG send a letter to the State, requesting advance obligation of FFY 2007 federal funds.

4 The cost of the construction work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA and MAG.

5 The City may request that the State, as authorized agent for the City, perform certain work and prepare certain documents required by the FHWA to qualify certain projects for and to receive federal funds at City expense.

6 The State upon receipt of an invoice from the City, will reimburse the City with federal funds addressed under this agreement at 80% of Phase II Project costs if federal funds are available.

7 Should some unforeseen conditions or circumstances increase the cost of said work required, by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in the project.

III. MISCELLANEOUS PROVISIONS

1 The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith, construction, construction engineering and administration in connection therewith, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments,

agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees

2. This agreement shall remain in force and effect until completion of the work and related deposits or reimbursements.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(C) or 12-1518(B) as appropriate

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows.

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX (602)-712-7424

City of Phoenix
Street Transportation Director
200 W Washington Street, 5th Floor
Phoenix, AZ 85003
FAX (602) 495-2016

8. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF PHOENIX, a Municipal Corporation,
Frank Fairbanks, City Manager

STATE OF ARIZONA
Department of Transportation

By Thomas E. Callow
THOMAS E. CALLOW, Director
Street Transportation Department

By Dale Buskirk
DALE BUSKIRK
Division Director
Transportation Planning Division

ATTEST

By Sharon J. White

ACTING City Clerk

G:02-160-LGVT-PHX-Agreement-AC-43rd Ave @ Peoria Ave
5-8-2003 - JW

2003 JUL 19 AM 11:59

CITY CLERK DEPT

**CITY OF PHOENIX
REQUEST FOR COUNCIL ACTION**

T:\DATA\Judl TRCA\1204-11st.doc

Complete this form per O.P. 1.906 and A.R. 4.11.

Refer to the City Council Agenda Process Reference Guide for Assistance

ACTION REQUESTED	Formal Action:	OR	Legal Document:
	Bid Award <input type="checkbox"/>		Ordinance <input type="checkbox"/>
	License Application <input type="checkbox"/>		Resolution <input checked="" type="checkbox"/>
	Public Hearing <input type="checkbox"/>		Emergency Clause? <input type="checkbox"/>
	Other <input type="checkbox"/>		(for use only w/ord. or res. requests)

IMPACTED DISTRICT(S)	DISTRICT 1/ NEW DISTRICT 1	ADDITIONAL BACKUP MATERIAL SENT UNDER SEPARATE COVER?	<input type="checkbox"/>
SUBJECT	INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION - 43RD AVENUE AND PEORIA AVENUE		

REQUESTED AGENDA DATE	12/4/2002	PREPARED BY	Name	Ray Dovalina, P. E.
			Department	Street Transportation
			Phone	495-5817

APPROVALS	Division Head:	J. Donald Herp, P.E.	If prepared for another department: Department Name:
	Department Head:	Thomas E. Callow, P.E.	
			Approval:

BID AWARD INFORMATION	Bid Surety Required?	<input type="checkbox"/>	Performance Surety Required	<input type="checkbox"/>
	Submitted by Low Bidder?	<input type="checkbox"/>	Amount?	
	Contract Required?	<input type="checkbox"/>	Requisition No.	

CONTRACT INFORMATION	Contract Amendment?	<input type="checkbox"/>
	If Yes, Current Contract No.	
	Approved by:	Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Formal Action <input type="checkbox"/>
		on Date:

BUDGET INFORMATION	\$ 0.00	To Be Encumbered?	<input type="checkbox"/>
	Source of Funds:	Fiscal Year?	
	Fund Center(s) (SAP-FM):	ST87600019	
	Commitment Item(s) (SAP-FM):		
	Availability of Funds Approval	Lauri L. Wingenroth	

CITY MANAGER'S OFFICE	Approved by	CM Control No. 65
	Jack Tevlin, Deputy City Manager 11/21/02	

CITY CLERK DEPARTMENT	Council Action Taken:	Adopted
	Ordinance Number:	
	Resolution Number:	19882
	Comments:	
	RCA No.	40362
	Contract No.	104983
	Meeting Date	12/4/2002
	Item No.	57

ITEM**DISTRICT 1/NEW
DISTRICT 1****INTERGOVERNMENTAL
AGREEMENT WITH ARIZONA
DEPARTMENT OF
TRANSPORTATION – 43RD
AVENUE AND PEORIA
AVENUE**

Request to authorize the City Manager to enter into an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation Department (ADOT) to advance Federal Aid funds for the construction of a bicycle underpass at 43rd Avenue and Peoria Avenue.

Financial Impact

Federal Aid funds for this project are programmed in Federal Fiscal Years 2002 (Phase I – \$1.6 million) and 2007 (Phase II - \$0.6 million). The agreement essentially commits the City to pay for the Federal share of Phase II of the project until such time as the Federal funds are available. City staff will work with ADOT and MAG to accelerate the FY 2007 Federal funds.

The underpass will be constructed as one project starting in FY 2003. The total project construction cost is estimated at \$3.1 million, of which \$2.2 million will be paid by Federal funds.

Citizen Notification

This project has been endorsed by the Mayor's Bicycle Task Force and is a key link in the bicycle path along the Arizona Canal and Arizona Canal Diversion Channel across north Phoenix and Glendale. Users of the path must now cross at grade through the signalized intersection of 43rd Avenue and Peoria Avenue.

No right-of-way is required for this project. Some adjacent properties will be affected during construction and will be notified well in advance of the start of construction.

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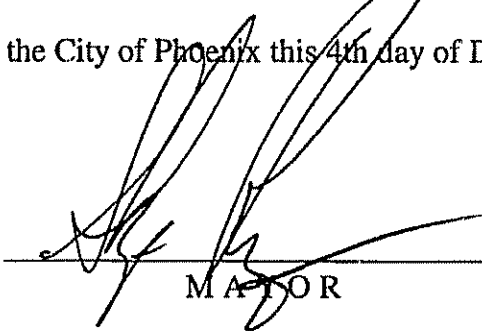
RESOLUTION NO. 19882

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN INTERGOVERNMENTAL
AGREEMENT WITH THE STATE OF ARIZONA
THROUGH THE ARIZONA DEPARTMENT OF
TRANSPORTATION FOR THE CONSTRUCTION OF A
BICYCLE UNDERPASS AT 43RD AND PEORIA
AVENUES.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX as
follows:

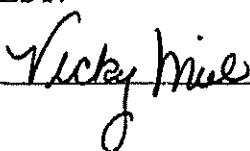
SECTION 1. The City Manager is authorized to enter into an
intergovernmental agreement with the State of Arizona through the Arizona Department
of Transportation for the construction of a bicycle underpass at 43rd and Peoria Avenues.

PASSED by the Council of the City of Phoenix this 4th day of December,
2002.



MAYOR

ATTEST:



City Clerk

CITY CLERK DEPT.
700 NOV 27 AM 9:29

APPROVED AS TO FORM:

William Back City ^{ACTING} Attorney
DWB

REVIEWED BY:

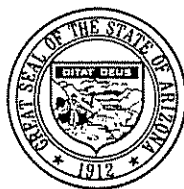
Frank Richards City Manager

APPROVAL OF THE CITY OF PHOENIX ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF PHOENIX and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 16 day of May, 2003.

Jose U. Serna
ACTING City Attorney
DLB



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8859

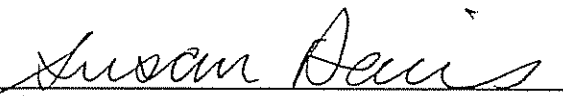
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-1929TRN (JPA 02-160), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED May 28, 2003.

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.